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1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA

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W. A. DREW EDMONDSON, in his)
5 capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
6 OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
7 in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
8 FOR THE STATE OF OKLAHOMA,)

9 Plaintiff,)

10 vs.)4:05-CV-00329-TCK-SAJ

11 TYSON FOODS, INC., et al,)

12 Defendants.)

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14 THE VIDEOTAPED DEPOSITION OF
15 DAN HENDERSON, produced as a witness on behalf of
16 the Plaintiff in the above styled and numbered
17 cause, taken on the 5th day of June, 2008, in the
18 City of Tulsa, County of Tulsa, State of Oklahoma,
19 before me, Lisa A. Steinmeyer, a Certified Shorthand
20 Reporter, duly certified under and by virtue of the
21 laws of the State of Oklahoma.

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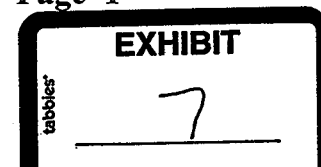
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Henderson, Dan 6/5/2008

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1 A Yes, we should have had that.

2 Q What would have been the nature of those
3 records?

4 A It would just have been grower lists with
5 their addresses and physical locations on it. 09:23AM

6 Q If you recall, did the Peterson contract with
7 its growers at that time have any provisions
8 relating to the handling of the litter?

9 A I don't believe so.

10 Q Was a provision ever inserted to provide that 09:23AM
11 the growers were to -- were to be given the
12 ownership of the litter?

13 A Not to my knowledge. It was always just that
14 way forever.

15 Q That it was just understood that that -- 09:24AM

16 A The growers owned the litter, yes.

17 Q Is that also true with the mortalities, with
18 the dead birds?

19 A The growers were responsible for disposing of
20 the dead birds in a proper manner. 09:24AM

21 Q And if you recall, was that specifically set
22 out in the contracts at the time that --

23 A I think there was a provision put in there
24 eventually, and I don't remember the time frame on
25 that, stating that they were to do that because 09:24AM

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1 there was some complaints of someone feeding the
2 dead birds to the eagles because they like the
3 eagles, and that kind of brought everything to
4 light, that they weren't disposing of them quite
5 like they should have. 09:25AM

6 Q Did -- when you had that issue, did Peterson
7 take any steps to ensure that the dead birds were
8 disposed of properly?

9 MS. LONGWELL: Object to form.

10 A The field service personnel were to keep an 09:25AM
11 eye on that whenever they visited the farms.

12 Q While you were COO, did you ever hear from any
13 of the growers that they wanted to be relieved of
14 the responsibility of disposing of the litter?

15 A I don't believe so. 09:25AM

16 Q Now, when we use the term litter, Mr.
17 Henderson, what do you understand that to mean?

18 A It's a mixture of the bedding that the growers
19 put down before they put down the new flock and the
20 droppings of the birds themselves. It's a blending 09:26AM
21 of those two things.

22 Q Also would include some perhaps seed or some
23 feed that falls out of the feeders?

24 A It can include that, yes.

25 Q Okay. Would there be occasions when the 09:26AM

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1 litter would also include dead birds or parts of

2 dead birds?

3 A Yes, I've seen that.

4 Q When -- were you ever involved in the process

5 of talking with people who might wish to become a 09:26AM

6 Peterson grower?

7 A I don't believe so.

8 Q Did the company promote the use of litter as a

9 fertilizer while you were there?

10 A No. 09:27AM

11 Q Was it the practice, though, within your

12 growers at that time to land apply the poultry

13 litter?

14 MS. LONGWELL: Object to form.

15 A I can't speak to all the growers. I can speak 09:27AM

16 to my dad's. Yes, we land applied the litter.

17 Q Well, just from your experience within the

18 company, was that not the predominant practice?

19 MS. LONGWELL: Object to form.

20 A There was quite a few growers that didn't have 09:27AM

21 enough acreage to do that and do it right, so they

22 would sell their litter to neighboring farms and so

23 forth that did have acreage to use litter.

24 Q And then it would be land applied?

25 A Yes. 09:28AM

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1 Q That was the general practice; there might be
2 an exception or two?

3 A Sure.

4 Q Let me see if I can get the dates down during
5 which you were COO. Was it -- you left that 09:28AM
6 position in 2000; is that correct?

7 A Yes.

8 Q And how many years did you have the position?

9 A I think about three. I'm not real sure.

10 Q By the way, what prompted you to leave the 09:28AM
11 position?

12 A As Mr. Peterson aged, he got more and more and
13 more difficult to work for, and it got harder and
14 harder to get things done that the company needed to
15 do to survive in my opinion, and I finally came to 09:28AM
16 the realization that he or I one needed to leave,
17 and he had all the stock so he wasn't going to, so I
18 did.

19 Q It was a voluntary parting, though?

20 A Yes, it was. 09:29AM

21 Q So you were COO, if I understood right, from
22 about '97 to 2000?

23 A Approximately.

24 Q About three years, okay. During that time did
25 Peterson take any steps to ensure that litter was 09:29AM

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1 them try to utilize that to change their mind of how

2 they needed to approach their practices of applying

3 litter.

4 Q What would the reaction have been had Peterson

5 tried to force these growers to do something with 11:19AM

6 regards to the phosphorus?

7 MR. BULLOCK: Objection to form.

8 A This is my land and you're telling me how to

9 apply my fertilizer to it; you don't have the right

10 to do that under this contract. 11:19AM

11 Q Do you know other farmers besides yourself?

12 A Oh, yes.

13 Q And would you say farmers are encouraged to be

14 responsible for how they manage their lands?

15 MR. BULLOCK: Objection to form. 11:19AM

16 A They have to be. There's enough monetary

17 investment in farms and poultry housing and tractors

18 and diesel fuel and all those sort of things, that

19 they have to be good stewards of the land or they

20 won't survive. 11:20AM

21 Q Is there any benefit to a farmer or a grower

22 to overapply poultry litter?

23 A Just the opposite if you got cattle on it.

24 MR. BULLOCK: Objection to form.

25 Q Why is that? 11:20AM